

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

**In the Matter of:**

**AERO NATIONAL, INC.**

FAA Order No. 2000-26

Served: December 21, 2000

Docket No. CP99EA0016

DMS No. FAA-1999-5449<sup>1</sup>

**DECISION AND ORDER<sup>2</sup>**

In a written initial decision served on March 3, 2000,<sup>3</sup> Administrative Law Judge Burton S. Kolko held that Aero National violated Section 135.337(b) of the Federal Aviation Regulations (FAR), 14 C.F.R. § 135.337(b),<sup>4</sup> and assessed a \$3,300 civil penalty. Aero National filed an appeal from the law judge's decision.

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<sup>1</sup> Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the following Internet address: <http://dms.dot.gov>.

<sup>2</sup> The Administrator's civil penalty decisions are available on LEXIS, Westlaw, and other computer databases. They also can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, *see* 65 Fed. Reg. 67,445, 67,462 (November 9, 2000).

<sup>3</sup> A hearing was held in this matter on October 19, 1999. At the conclusion of the hearing, the law judge elected to prepare a written initial decision. A copy of the law judge's written initial decision is attached.

<sup>4</sup> In particular, the law judge held that Aero National violated Section 135.337(b)(3), which provides as follows:

(b) No certificate holder may use a person, nor may any person serve as a check airman (aircraft) in a training program established under this subpart unless, with respect to the aircraft type involved that person –

(3) Has satisfactorily completed the proficiency or competency checks that are required to serve as a pilot in command in operations under this part.

After consideration of the record on appeal and the appellate briefs, Aero National's appeal is denied.

Aero National is a fixed base operator. It operates a charter service and is authorized to fly multiengine aircraft on both VFR<sup>5</sup> and IFR<sup>6</sup> flights under Part 135. (Tr. 70.) In June 1998, Aero National employed James Hickey as a check airman, and Jeffrey M. Vaccaro as a pilot. On June 29, 1998, James Hickey gave competency checks in a Cessna 340 and a PA-31 and an IFR-proficiency check to Jeffrey Vaccaro. (Tr. 17, 20.)

When an airman takes a competency check, an airman is required to demonstrate his ability to fly a specific make and model aircraft. A pilot may not serve as pilot in command of an aircraft in a Part 135 operation unless since the beginning of the twelfth calendar month before the flight, the pilot has passed a competency check in that aircraft. 14 C.F.R. § 135.293(b).

A proficiency check is given to test a pilot's capability to fly on instruments and, in contrast to a competency check, is not aircraft specific. (Tr. 17.) An instrument proficiency test covers holding procedures, different types of instrument approaches, missed approaches, uses of the autopilot, etc. (Tr. 24.) A pilot may not serve as a pilot in command of an aircraft under IFR unless since the beginning of the sixth calendar month before that service, the pilot has passed an instrument proficiency check. 14 C.F.R. § 135.297(a). As explained by FAA Aviation Safety Inspector Terrence Ricker, a

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14 C.F.R. § 135.337(b)(3).

<sup>5</sup> Visual Flight Rules. *See* 14 C.F.R. §§ 91.151-91.159.

<sup>6</sup> Instrument Flight Rules. *See* 14 C.F.R. §§ 91.167-91.193.

proficiency check is "good" for a 6-month period and the pilot has a 1-month grace period in which to retake the proficiency check. (Tr. 18, 25.)

When Hickey administered the competency and proficiency checks, he was current himself on his competency checks but not his proficiency checks.<sup>7</sup> Hickey's authorization to fly an aircraft under IFR lapsed on April 30, 1998,<sup>8</sup> and he had not renewed it prior to administering the check ride to Vacarro on June 29, 1998.

The central issue for the law judge to decide was whether Hickey was authorized to administer the IFR proficiency check to Vaccaro if Hickey's own authority to fly an aircraft under IFR in a Part 135 operation had lapsed. Aero National argued that as long as Hickey was current on either his competency *or* his proficiency checks, he could administer both competency *and* proficiency checks to other pilots. The law judge rejected Aero National's argument as follows:

I find, as Inspector Ricker stated, that a check airman such as Captain Hickey could administer a check ride only in those areas of competency and proficiency in which he is current himself (Tr. 27-29, 44, 51, 105-06). There was some disagreement on this point (see e.g., Tr. 84); but section 135.337(b)(3) is plain: it states in pertinent part that no person may "serve as check airman ... unless ... that person has satisfactorily completed the proficiency or competency checks ..." Any other interpretation of the FARs, moreover, is contrary to the FAA's goal of safe skies.

(Initial Decision at 3.)

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<sup>7</sup> At the time, Aero National's chief pilot maintained a status board on which he kept track of when the various pilots needed to take their check rides. Michael Solon, the chief pilot, miscalculated when Hickey was due to take his next instrument proficiency check, and as a result, wrote on the status board that Hickey's instrument proficiency lapsed one month later than it actually did. (Complainant's Exhibit 6; Tr. 83.)

<sup>8</sup> See Complainant's Exhibits 1 and 2. He did not retake the instrument proficiency test during the one-month grace period which ended on May 31, 1998.